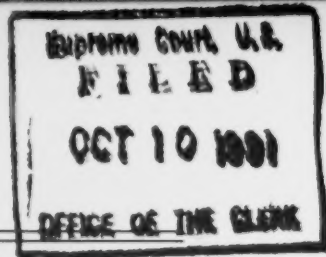


91-709

No.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

THOMAS J. LOWRANCE,
Petitioner,

vs.

STEPHEN J. HACKER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

THOMAS J. LOWRANCE

Loop Station
P.O. Box 314
Chicago, Illinois
312/329-0368

Pro-Se, Petitioner

QUESTION PRESENTED

1. Whether Petitioner, Assignor to Internal Revenue Service of Judgement and funds subject to Petitioner's garnishment in partial satisfaction of existing perfected I.R.S. tax lien(s), has standing to dispute competing subsequent junior claim to garnished funds.

LIST OF PARTIES

Petitioner certifies that only the following were parties to the proceedings below:

Thomas J. Lowrance, *Pro Se*.

Stephen J. Hacker;

Andrew Brehm;

James D. Adducci;

Michael B. Roche;

The Panel of Judges of the United States Court of Appeals for the Seventh Circuit that sat on the court on January 24, 1991.

Hon. Harlington Wood, Jr., Circuit Judge

Hon. Kenneth F. Ripple, Circuit Judge

Hon. Thomas E. Fairchild, Senior Circuit Judge

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THE DECISION BELOW CREATES A SPLIT
AND CONFLICTING AUTHORITY IN THE
FEDERAL COURT OF APPEALS WITH THE
DECISION OF ANOTHER UNITED STATES
COURT OF APPEALS ON THE SAME MATTER,
AN ISSUE OF IMPORTANT SOCIAL AND
ECONOMIC CONSEQUENCE, WHICH REQUIRES
HAVING THE RULE OF LAW SETTLED BY
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No. _____

IN THE
Supreme Court of the United States

October Term, 1991

THOMAS J. LOWRANCE,

Petitioner,

vs.

STEPHEN J. HACKER,

Respondent.

Petitioner, Thomas J. Lowrance, respectfully prays that a Writ of Certiorari be issued to review the judgement and Opinion of the United States Court of Appeals for the Seventh Circuit filed in this proceeding on July 31, 1991.

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit, dated July 31, 1991, and made part of this Petition in the appendix hereto, p.1a, *infra*.

Following a bench trial, judgement was entered in favor of Petitioner in the amount of \$39,309.30 plus interest and the judgement was affirmed on Appeal. See *Lowrance v. Hacker*, 866 F2nd. 950 (7th Cir. 1989).

JURISDICTION

On July 31, 1991, the Seventh Circuit dismissed Petitioners Appeal for lack of standing. See p. 1a, *infra*. No Petition for rehearing was sought.

On August 20, 1991, pursuant to Federal Rules of Appellate Procedure 41(b), Petitioner filed Appellant's Motion to Stay Mandate which was granted until September 4, 1991. Petitioner received an extended Stay of mandate to September 9, 1991.

The jurisdiction of this Court to review the judgement of the Seventh Circuit is invoked under 28 U.S.C. sec 1254 (1). This Petition for Writ of Certiorari is filed within 90 days of the entry of the Opinion of the Court of Appeals. See 28 U.S.C. Section 2101(c).

STATEMENT OF CASE
FACTUAL STATEMENT

Petitioner, a resident of Illinois, originally filed this Breach of Contract action in the Circuit Court of Cook County, Illinois. Respondent-Hacker, a resident of Florida, timely removed the case to a Federal District Court under 28 U.S.C. 1441, 1446.

The Parties are citizens of different states and the amount in controversy exceeds \$10,000., exclusive of interest and costs. The District Court therefore had jurisdiction over the action pursuant to 28 U.S.C. Sec. 1332.

Petitioner appealed to the United States Court of Appeals for the Seventh Circuit from the final order which affirms and adopts the Report and Recommendations of the Magistrate issued on September 15, 1989, entered in this action on the 30th day of January, 1990.

Petitioner brought this appeal, pursuant to Federal Rules of Appellate Procedure, 4(a)(1).

On July 31, 1987 Lowrance, obtained a

judgement against Respondent Hacker in the U.S. District Court for the Northern District of Illinois, in the amount of \$39,309.30 plus interest.

Hacker, appealed to the U.S. Court of Appeals for the Seventh Circuit.

Subsequently, as part of supplementary proceedings, Lowrance brought a garnishment proceeding against Stotler & Co. ("Stotler") and sought a turnover order of \$51,425.50 held by Stotler.

Hacker vigorously resisted garnishment and on February 17, 1989, the U.S. Court of Appeals affirmed Lowrance's judgement against Hacker. Lowrance v. Hacker 866 F2d 950 (7th Cir. 1989)

At a hearing on May 19, 1989, Hacker presented an assignment date May 16, 1989, of a purported judgement ("State Court Judgement") against Lowrance in the principal amount of \$150,690.00. Because the amount of the State Court Judgement, Hacker filed a Motion for an Order discharging Lowrance's Federal Court

Judgement. At that same hearing, Lowrance informed the Court that Lowrance is liable for taxes owed the Internal Revenue Service and that Lowrance has assigned "all rights" in the Hacker judgement to the Internal Revenue Service in early May, 1989. The court denied Hacker's May 19, 1989 motion for an Order discharging his judgement deferring the matter to the State Court, which granted Hacker's request for offset.

On September 15, 1989 the Magistrate's Report and Recommendation was entered incorporating the State Court offset.

On September 25, 1989, Lowrance timely filed his "Plaintiff's Exception to Report and Recommendation," in which Lowrance re-asserted the priority of an IRS tax levy over a subsequent junior claim to garnished funds.

On January 30, 1990, the District Court issued a final Order which affirmed and adopted the Report and Recommendation of the magistrate issued on September 15, 1989 and Lowrance

appealed.

After full briefing, inclusive of petitioner's assertion of requisite personal stake to have funds subject to petitioner's garnishment credited to petitioner's IRS tax liability, an Order was entered on July 31, 1991, dismissing Petitioner-Lowrance's Appeal based upon lack of standing. It is from this Order that Petitioner seeks a Writ of Certiorari.

REASON FOR GRANTING THE WRIT

This Court has not previously considered the precise question presented in this Writ.

THE DECISION BELOW CREATES A SPLIT AND CONFLICTING AUTHORITY IN THE FEDERAL COURT OF APPEALS WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME MATTER, AN ISSUE OF IMPORTANT SOCIAL AND ECONOMIC CONSEQUENCE, WHICH REQUIRES HAVING THE RULE OF LAW SETTLED BY THE SUPREME COURT.

In SEC. V. Dennis Levine, 881 F2d. 1165 (2d. Cir. 1989), Dennis Levine was permitted to argue that funds previously directed to be disgorged, should be paid to the I.R.S.

The Second Circuit stated that:

"...Affording priority to tax claims [would be] conferring substantial benefits on Defendants" (881 F2d at 1165)

The Court also stated that the SEC's argument:

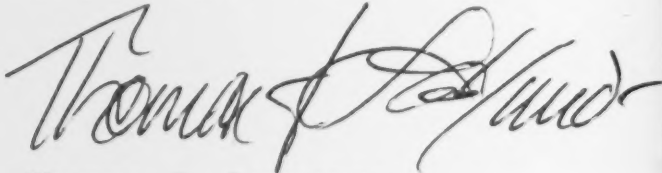
"....that Levine and Wilkins did not have property rights in the assets they disgorged was not warranted by the applicable legal principles" 881 F2d 1165.

Also at 881 F2d 1165 there is a discussion to the effect that a debtor's right to allocate limited assets among his creditors is cognizable in federal court.

CONCLUSION

Partial satisfaction of a nondischargeable I.R.S. debt bestows substantial benefit on Petitioner sufficient for standing and for the above reasons the Supreme Court should grant this requested Writ.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas J. Lowrance".

Thomas J. Lowrance
Petitioner, Pro-se

Thomas J. Lowrance
Loop Station
P.O. Box 314
Chicago, Illinois 60691
312/329-0368

October 25, 1991

APPENDIX A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued January 24, 1991
July 31, 1991

Before

Hon. HARLINGTON WOOD, JR., Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge
Hon. THOMAS E. FAIRCHILD, Senior Circuit Judge

| | | |
|------------------------------|---|-------------------|
| No. 90-1457 |) | |
| |) | Appeal from the |
| THOMAS J. LOWRANCE, |) | United District |
| <u>Plaintiff-Appellant</u> , |) | Court for the |
| |) | Northern District |
| vs. |) | of Illinois, |
| |) | Eastern Division. |
| |) | |
| STEPHEN J. HACKER, |) | No. 85 C 5268 |
| <u>Defendant-Appellee</u> , |) | Paul E. Plunkett, |
| |) | <u>Judge</u> |

ORDER

This case has a long and complicated history, but because we need not address the merits of this appeal we will set forth only those facts pertinent to our decision. In

1985, plaintiff-appellant Thomas Lowrance ("Lowrance") filed suit in Cook County against defendant-appellee Stephen Hacker ("Hacker") seeking recovery of a debit balance in Hacker's commodities trading account. Upon hacker's petition, the suit was removed to federal district court based upon diversity jurisdiction. 28 U.S.C. § 1332. Following a bench trial, judgement was entered in favor of Lowrance in the amount of \$39,309.30 plus interest and that judgement was affirmed on appeal. Lowrance v. Hacker, 866 F.2d 950 (7th Cir. 1989).

Lowrance instituted a garnishment proceeding to enforce his judgement and in October 1987 a garnishment summons was served on Stotler and Company ("Stotler") as custodian of a customer account allegedly owned by Hacker. In November 1987, Hacker filed a motion to quash the garnishment. The district court then referred the post judgement proceedings to a magistrate judge. While various motions concerning the

garnishment were pending before the magistrate judge, Hacker acquired an assignment of a judgement which had been rendered against Lowrance in favor of plaintiff Commonwealth Commodities Corporation in September 1986 in Cook County, Illinois (the "Commonwealth judgement"). The amount of the Commonwealth judgement exceeded \$150,000.

At a May 1989 hearing before the magistrate judge, Hacker, as assignee of the Commonwealth judgement, sought to set-off that judgement against the judgement obtained by Lowrance against Hacker. Lowrance informed the magistrate judge that he owed delinquent taxes to the Internal Revenue Service ("IRS") and that he had assigned his rights in the judgment against Hacker to the IRS. Stotler, the garnishee, then sought to interplead the IRS because of its lien on Lowrance's assets. In her Report and Recommendation of September 15, 1989, the magistrate judge recommended, inter alia, that Hacker's motion for set-off be granted and the

interpleader action be dismissed. The district judge then issued an order on January 30, 1990 affirming and adopting the Report and Recommendation of the magistrate judge. It is from this order that Lowrance appeals.

The only argument advanced by Lowrance on appeal is that the IRS is entitled to the proceeds of the garnishment pending against Hacker because of its lien on Lowrance's assets.¹ The arguments not advanced by Lowrance are also significant for purposes of our analysis. He does not attack the propriety of offsetting the judgements. Nor does Lowrance argue that he will be harmed in any way as a result of the district court order allowing

¹ Included in Lowrance's "Statement of Issues Presented for Review" is an argument that the district court erred in dismissing as moot the question of pre-judgement interest (apparently relating to his judgement against Hacker). However, Lowrance does not address this issue in his brief, nor does he assert any legal authority to support his position. Likewise, we will not address the issue.

set-off of the judgements. His appeal is merely an attempt to assert the rights of the IRS and this he cannot do.

It is undisputed that Lowrance had standing as the plaintiff in the district court. However, there must be a "live controversy at every stage of the litigation." In re Deist Forest Products, Inc., 850 F.2d 340, 342 (7th Cir. 1988). See also Foster v. Center Township of LaPorte County, 798 F.2d 237, 245 (7th Cir. 1986). The first element of the standing inquiry requires a litigant to satisfy the "case or controversy" requirement of Article III by alleging "an injury to himself that is likely to be redressed by a favorable decision." Penny Saver Publications, Inc. v. Village of Hazel Crest, 905 F.2d 150, 154 (7th Cir. 1990). See also Allen v. Wright, 468 U.S. 737, 751 (1984); FMC Corp. v. Boesky, 852 F.2d 981, 987 (7th Cir. 1988). In his appeal, Lowrance has not alleged any injury to himself. He simply argues that the IRS is entitled to the proceeds

of the garnishment against Hacker. Lowrance does not dispute the validity of the Commonwealth judgement. Therefore, regardless of which debt is reduced by the garnishment proceeds--the IRS lien or the Commonwealth judgement--Lowrance remains in the same financial position. Although Lowrance may have personal or financial reasons for seeking to reduce the IRS lien first, he has not asserted those reasons on appeal. Because Lowrance has not alleged any actual or threatened injury to himself, we need not analyze the redressability component of the standing inquiry.

Even if Lowrance had alleged an injury sufficient to satisfy the constitutional requirements for standing, he would still lack the standing necessary for this court to adjudicate the issue he now raises. Prudential limitations on standing require that a litigant "generally must assert his own legal rights and interest, and cannot rest his claim to relief on the legal rights or interests of third

parties." Warth v. Seldin, 422 U.S. 490, 499 (1975). See also Deist Forest Products, 850 F.2d at 341; First Equipment Mfrs.' Ass'n. v. Marshall, 679 F.2d 679, 681 (7th Cir. 1982), cert. denied, 459 U.S. 1105 (1983). Lowrance's mere desire to protect the interests of the IRS does not confer standing on him to allow this court to adjudicate his claim. He does not raise any issue asserting his own rights or interests with respect to the district court order from which he appeals. Lowrance attempts to assert the rights of a third party--the IRS--and in so doing he has failed to provide a "controversy" between himself and the appellee, Hacker.

For the foregoing reasons, this appeal is dismissed for lack of standing.